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October 16, 2014

FOUNDED 1887

VIA ECF & E-MAIL

Hon. Katherine Polk Failla  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 618  
New York, NY 10007

**Re: Telebrands Corp. v. TV Direct LLC  
Civil Action No. 1:14-CV-5978-KPF-FM**

Dear Judge Failla:

The undersigned represent the parties in the above-referenced case. On August 13, 2014, this Court issued an Order directing both Telebrands ("Telebrands") and TV Direct LLC ("TV Direct") to jointly submit a letter providing the following information prior to the Initial Pretrial Conference. Accordingly, the parties jointly submit the following information:

- (1) A brief statement of the nature of the action, the principal defenses thereto, and the major legal and factual issues that are most important to resolving the case, whether by trial, settlement, or dispositive motion;**

This is a patent and trade dress infringement action that arises under the Patent Laws of the United States (35 U.S.C. §1 *et seq.*), the Trademark and Unfair Competition Laws of the United States (15 U.S.C. § 1051 *et seq.*), and the statutory and common law of New York (N.Y. Gen. Bus. Law § 360).

The major factual and legal issues in this case are whether 1) TV Direct's "Infinity Knife" product imitates Telebrands' patented design of its AERO KNIFE product such that it infringes U.S. Patent No. D704,010, and whether such infringement was willful; 2) TV Direct's "Infinity Knife" product incorporates the elements of Telebrands' AERO KNIFE product such that it infringes its distinctive trade dress, and whether such infringement was willful; 3) TV Direct's actions have caused injury to business reputation under N.Y. GBL §360; 4) TV Direct has engaged in New York common law unfair competition; 5) Telebrands' U.S. Patent No. D704,010 is

allegedly invalid for failure to comply with the statutory provisions of patentability, including, 35 U.S.C. §§102, 103, 112 and/or 171; and/or 6) Telebrands' trade dress is allegedly non-distinctive and/or functional and not identified by consumers as an indicator of source.

- (2) A brief explanation of why jurisdiction and venue lie in this Court. In any action in which subject matter jurisdiction is founded on diversity of citizenship pursuant to Title 28, United States Code, Section 1332, the letter must explain the basis for the parties' belief that diversity of citizenship exists. Where any party is a corporation, the letter shall state both the place of incorporation and the principal place of business. In cases where any party is a partnership, limited partnership, limited liability company, or trust, the letter shall state the citizenship of each of the entity's members, shareholders, partners, and/or trustees. See, e.g., *Handelsman v. Bedford Vill. Assocs. L.P.*, 213 F.3d 48 (2d Cir. 2000).**

Jurisdiction of this Court is founded upon 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1332(a)(1), 1338(a) and (b), and the supplemental jurisdiction of this Court under 28 U.S.C. § 1367. In particular, jurisdiction lies in this Court under 28 U.S.C. §1331, because it is based on a federal question, namely, questions arising under the Patent Laws of the United States and the Trademark Laws of the United States.

Venue is proper within this Judicial District under 28 U.S.C. Sections 1391(b) and (c), and 1400 (b). In particular, TV Direct has a place of business in this Judicial District at 347 Fifth Avenue, Suite 1100, New York, New York 10016, TV Direct has sold the accused "Infinity Knife" product in this Judicial District.

- (3) A statement of all existing deadlines, due dates, and/or cut-off dates;**

The Initial Pretrial Conference is scheduled in the above-referenced for October 23, 2014, at 3:15 p.m.. The parties are submitting concurrently herewith via e-mail a Proposed Civil Case Management Plan and Scheduling Order.

- (4) A brief description of any outstanding motions;**

Not applicable.

- (5) A brief description of any discovery that has already taken place and of any discovery that is necessary for the parties to engage in meaningful settlement negotiations;**

TV Direct has informally provided Telebrands with financial information relating to the accused units sold. TV Direct will provide Telebrands with supporting documentation for the informal numbers soon so that the parties can engage in meaningful settlement negotiations.

- (6) A statement describing the status of any settlement discussions and whether the parties would like a settlement conference; and**

Once Telebrands receives the supporting documentation from TV Direct, it expects that the parties will engage in settlement discussions shortly thereafter. At this time, the parties do not require a Court ordered settlement conference and will advise the Court if they believe one to be necessary.

**(7) Any other information that the parties believe may assist the Court in advancing the case to settlement or trial, including, but not limited to, a description of any dispositive issue or novel issue raised by the case.**

None at this time.

Respectfully submitted,

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